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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DAVID T. FREDERICK, W. MICHAEL WRIGHT,  
RICHARD T. VANGENEWITT, WILLIAM D. YOST,  
R. MICHAEL MCGRADY, R. BARRIE SLAYMAKER JR.,  
GREG KROAH-HARTMAN and ESER SUKAN

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Appeal 2009-005543  
Application 09/086,857  
Technology Center 3600

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Before LINDA E. HORNER, JOHN C. KERINS and  
KEN B. BARRETT, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

David T. Frederick et al (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-50. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM-IN-PART.

## THE INVENTION

The Appellants' invention is directed to a system and method for providing medical items. Independent claim 1 is illustrative:

1. A system for providing medical items comprising:

a computer, wherein the computer is in operative connection with a data store, wherein the data store includes user data representative of a plurality of authorized users, item data representative of a plurality of medical items, and location data representative of storage locations in which the medical items are stored;

a user interface in operative connection with the computer, wherein the interface includes an input device;

a refrigerator, wherein storage location for at least one medical item is located in an interior area of the refrigerator, the refrigerator including a door, wherein access to the interior area is controlled by opening and closing the door;

a lock module operatively attached to the refrigerator, wherein the lock module is in operative connection with the computer, and wherein the lock module is operative responsive to a signal from the computer to change the lock module from a locked to an unlocked condition, wherein in the locked condition the refrigerator is prevented from being opened and in the unlocked condition the door is enabled to be opened;

wherein responsive to a user inputting identification data through the input device of the interface corresponding to the

data representative of an authorized user stored in the data store, the computer enables the user to input item indicia corresponding to a medical item through the input device, and wherein the computer is operative responsive to input of the item indicia to output the signal changing the lock module to the unlocked condition.

### THE REJECTIONS

The Examiner has rejected:

(i) claims 27-43 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention;

(ii) claims 1, 3, 9, 24, 25, 27, 31-33, 36-38, 42-44, 49, and 50 under 35 U.S.C. § 102(b) as being anticipated by Lavigne (US 5,572,873, issued Nov. 12, 1996);

(iii) claims 1, 4, 12-15, 21, 24, 27-29, 31-33, 39, 41, 44, 48, and 50 under 35 U.S.C. § 102(b) as being anticipated by Colson '450 (US 5,520,450, issued May 28, 1996)<sup>1</sup>;

(iv) claims 45, 48, and 50 under 35 U.S.C. § 102(b) as being anticipated by Pearson (US 5,562,232, issued Oct. 8, 1996)<sup>2</sup>;

(v) claims 46 and 48-50<sup>3</sup>, under 35 U.S.C. § 102(e) as being anticipated by Higham (US 5,805,456, issued Sep. 8, 1998);

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<sup>1</sup> The heading for this rejection in the Answer erroneously reads "*Higham et al.* '456." The body of the rejection includes findings directed to Colson '450. Ans. 9-12.

<sup>2</sup> The heading for this rejection in the Answer erroneously reads "*Colson* '297." The body of the rejection includes findings directed to Pearson. Ans. 12.

<sup>3</sup> Claim 49 is not identified in the statement as to which claims were rejected as anticipated by Higham. However, the grounds of rejection include

(vi) claim 45 under 35 U.S.C. § 102(b) as being anticipated by Colson ‘297 (US 5,346,297, issued Sep. 13, 1994);

(vii) claims 2 and 26 under 35 U.S.C. 103(a) as being unpatentable over Lavigne and the taking of official notice<sup>4</sup>;

(viii) claim 47<sup>5</sup> under 35 U.S.C. 103(a) as being unpatentable over Higham;

(ix) claims 1, 3, 24-26, and 41 under 35 U.S.C. 103(a) as being unpatentable over Lavigne in view of Aten (US 4,674,652, issued Jun. 23, 1987);

(x) claims 1-3, 24, and 25 under 35 U.S.C. 103(a) as being unpatentable over Colson ‘450 in view of Lavigne;

(xi) claims 45-50<sup>6</sup> under 35 U.S.C. 103(a) as being unpatentable over Blechl (US 5,377,864, Jan. 3, 1995) in view of Weinberger (US 5,408,443, Apr. 18, 1995);

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findings directed to the limitations found in claim 49. Ans. 13. Therefore we consider that the first sentence in the grounds of rejection includes a typographical error in omitting reference to this claim. The grounds of rejection include findings directed to claim 45 as well, but it appears that the Examiner did not reject claim 45, possibly in view of the “Declaration Under 37 C.F.R. Section 1.131” filed September 27, 2000, which purported to establish a reduction to practice of the subject matter of claim 45 prior to March 7, 1994.

<sup>4</sup> The heading for this rejection in the Answer erroneously makes reference to the Aten patent. Ans. 14.

<sup>5</sup> Claim 47 is not identified in the first sentence in the grounds of rejection, which identifies claim 46 instead. Ans. 15. However, the grounds of rejection specifically identify claim 47, and include findings directed to the limitations found in claim 47. Ans. 15-16. Therefore, we consider that the first sentence in the grounds of rejection contains a typographical error in identifying claim 46 instead of claim 47.

<sup>6</sup> Claim 48 is not identified in the statement as to which claims were rejected

(xii) claims 16-20, 34, and 35 under 35 U.S.C. 103(a) as being unpatentable over Lavigne in view of Engleson (US 5,781,442, Jul. 14, 1998)<sup>7</sup>;

(xiii) claims 4-8 and 40 under 35 U.S.C. 103(a) as being unpatentable over Colson '450 in view of Iwamoto (US 5,575,515, Nov. 19, 1996);

(xiv) claim 23 under 35 U.S.C. 103(a) as being unpatentable over Colson '450 in view of Warren (US 5,225,825, Jul. 6, 1993);

(xv) claims 9, 16, 17, 20, 22, 34, and 35 under 35 U.S.C. 103(a) as being unpatentable over Colson '450 in view of Holmes (US 6,039,467, Mar. 21, 2000);

(xvi) claims 9, 16, 17, 20, 22, 34, 35 and 42<sup>8</sup> under 35 U.S.C. 103(a) as being unpatentable over Lavigne in view of Holmes;

(xvii) claims 45 and 49 under 35 U.S.C. 103(a) as being unpatentable over Halvorson (US 4,847,764, Jul. 11, 1989) in view of McDonald (US 5,314,243, May 24, 1994);

(xviii) claims 46, 47, and 49 under 35 U.S.C. 103(a) as being unpatentable over Halvorson in view of Weinberger;

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as unpatentable over Blechl and Weinberger. However, the grounds of rejection include findings directed to the limitations found in claim 48. Ans. 18. Therefore we consider that the first sentence in the grounds of rejection includes a typographical error in omitting reference to this claim.

<sup>7</sup> The omission of claim 34 in the first sentence in the grounds of rejection is a typographical error. Ans. 19.

<sup>8</sup> Claims 43 and 44 are identified in the first sentence in the grounds of rejection, but no findings or conclusions are included in the grounds. We thus consider that the rejection does not apply to these claims.

(xix) claims 16-20, 34, and 35 under 35 U.S.C. 103(a) as being unpatentable over Colson ‘450 in view of Gombrich (US 4,857,716, Aug. 15, 1989);

(xx) claims 4-11 and 21 under 35 U.S.C. 103(a) as being unpatentable over Lavigne in view of Iwamoto;

(xxi) claims 11-15 and 23 under 35 U.S.C. 103(a) as being unpatentable over Lavigne in view of Genest (US 4,125,008, Nov. 14, 1978);

(xxii) claim 41 under 35 U.S.C. 103(a) as being unpatentable over Colson ‘450 in view of McDonald;

(xxiii) claim 41 under 35 U.S.C. 103(a) as being unpatentable over Colson ‘450 in view of Weinberger; and

(xxiv) claims 30 and 41 under 35 U.S.C. 103(a) as being unpatentable over Colson ‘450 in view of Higham.

## ANALYSIS

### *Indefiniteness--Claims 27-43*

The primary purpose of the definiteness requirement is to ensure that the claims are written in such a way that they give notice to the public of the extent of the legal protection afforded by the patent, so that interested members of the public, *e.g.*, competitors of the patent owner, can determine whether or not they infringe. That determination requires a construction of the claims according to the familiar canons of claim construction.

*All Dental Prodx, LLC v. Advantage Dental Prods.*, 309 F.3d 774, 779-80 (Fed. Cir. 2002).

The Examiner specifically objects to the limitation in claim 27 providing that “the determination that the medical item is stored in the

interior area”, maintaining that there is insufficient basis in the claim for that limitation. Ans. 6. We are not entirely certain what the Examiner means by “insufficient basis”, but in any event note that the clause preceding this limitation requires “determining with a computer” that a type of medical item corresponding to a user input is stored in the interior area. That “determining” is “the determination” referenced in the limitation objected to by the Examiner. The rejection is not sustained as to claim 27.

The Examiner also objects to claim 31, on the basis that there may be a plurality of “other locations” with no way of distinguishing which one is the “other.” Ans. 6. Claim 31 does not employ the term “other” or “other locations”, thus this objection is unfounded. Claim 32 makes reference to “the other storage location”, however it is reasonably clear that, in this usage, the claimed “other” location is referring to the storage location outside the interior area. The rejection is not sustained as to claim 31, or as to claim 32, if that is what was intended.

As no objection was made to any language in dependent claims 28-30 and 32-43, the rejection is not sustained as to these claims, as well.

*Anticipation--Claims 1, 3, 9, 24, 25, 27, 31-33, 36-38, 42-44, 49, and 50—Lavigne*

The Examiner found that Lavigne discloses all elements found in independent claims 1, 24, 27, and 44, including a computer that unlocks a chamber lock in response to a user inputting medical item information.<sup>9</sup>

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<sup>9</sup> Claims 1 and 24 require “the computer [to be] operative responsive to input of the item indicia to output the signal changing the lock module to the unlocked condition.” Claim 1, ll. 20-22; Claim 24, ll. 21-23. Claims 27 and 44 require “inputting... an input corresponding to the type of medical item stored in the interior area,” “determining... that the type of medical item



Ans. 6-7. The Examiner relies upon Lavigne's temperature locking function involving a computer locking a chamber locking solenoid 139 in response to a temperature violation within the chamber. *Id.*; Lavigne, 11:39-43. The Appellants counter that Lavigne's temperature locking function does not unlock the chamber locking solenoid 139 in response to a user inputting medical item information or indicia. App. Br. 32-35, 37, 38, 44, and 45. The Appellants further argue that Lavigne's chamber, during normal operation, is accessed by a manual key lock. *Id.*

The Examiner does not explain how Lavigne's temperature locking function unlocks the chamber locking solenoid 139 in response to a user inputting medical item information/indicia. While Lavigne's chamber locking solenoid 139 locks the chamber in response to temperature violation, it does not appear to unlock the chamber in response to a user inputting medical item information/indicia. The rejection of claims 1, 24, 27, and 44, and that of claims 3, 9, 25, 31-33, 36-38, 42 and 43 depending therefrom, as anticipated by Lavigne is not sustained.

In addition, the rejection of claims 49 and 50 as anticipated by Lavigne is not sustained, in that the Examiner did not reject base independent claim 48 on that ground, specifically noting, in an Office communication dated November 14, 2008, that the rejection had been withdrawn.

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corresponding to the input is stored in the interior area," "generating a signal with the computer responsive to the determination that the medical item is stored in the interior area," and "enabling access to the interior area with the lock module responsive to the signal generated by the computer." Claim 27, ll. 7-13; Claim 44, ll. 7-13.

*Anticipation--Claims 1, 4, 12-15, 21, 24, 27-29, 31-33, 39, 41, 44, 48, and 50—Colson ‘450*

The Examiner found that Colson ‘450 discloses all elements found in independent claims 1, 24, 27, 44, and 48, including a computer that unlocks a chamber lock in response to a user inputting medical item information.<sup>10</sup>

Ans. 9-12. The Appellants challenge the finding, arguing that Colson ‘450 does not disclose a computer that unlocks a chamber lock in response to a user inputting medical item information/indicia. App. Br. 47-57.

The Examiner improperly construes Colson ‘450’s computer as operating to unlock a chamber lock in response to a user inputting medical item information/indicia. The portion of Colson ‘450’s written disclosure pointed to by the Examiner discusses a user inputting medical item information when “[t]he user, nursing or technical person... input[s] to keyboard 23 coded information concerning the particular patient and information as to the person entering the data.” Colson ‘450, col. 5, ll. 17-23. Colson ‘450 thus does not describe a user inputting medical item information — only patient and user data. As a result, the rejection of claims 1, 24, 27, 44, and 48, and of claims 4, 12-15, 21, 28, 29, 31-33, 39, 41, and 50 depending therefrom, as anticipated by Colson ‘450 is not sustained.

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<sup>10</sup> In addition to the claim language listed above for Claims 1, 24, 27, and 44, the Appellants’ claim 48 requires “the lock is operative responsive to at least one signal from the at least one computer to change from the locked condition to the unlocked condition” and “responsive to the at least one user input device receiving input that corresponds to a particular one of the plurality of medical items, the at least one computer causes output of the at least one signal.” Claim 48, ll. 38-40 and 46-48.

*Anticipation--Claims 46 and 48-50—Higham*

With respect to claim 46, the Examiner, in addition to making findings directed to independent claim 45<sup>11</sup>, from which claim 46 depends, maintains that Higham describes a lock comprising a visual indicator. Ans. 13. The Appellants counter that Higham's lock does not have a visual indicator located on it. App. Br. 64. We agree with the Appellants. While the passage in Higham relied on by the Examiner describes a plurality of visual indicators, Higham does not appear to disclose a visual indicator located on the lock. The Examiner does not show how Higham's lock comprises a visual indicator. Accordingly, the rejection of claim 46 is not sustained.

With respect to independent claim 48, the Examiner found that Higham discloses all the elements, including a computer in operative connection with a data store, with the data store including user data representative of a plurality of authorized users. Ans. 13. The Appellants challenge the finding, arguing that "there is no indication that Higham's user identification information corresponds to data for an authorized user." App. Br. 63.

We find that Higham's description directed to the system illustrated in Figure 8 expressly describes that access to particular receptacles will be granted only to users authorized to have such access, and that the processor is controlled to provide access based upon the user identification entered into

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<sup>11</sup> Claim 45 was not rejected as anticipated by Higham, which ordinarily would suggest that claims depending from claim 45 would also not be anticipated. However, as discussed in footnote 3 above, consideration of other factors may have caused the Examiner to reject claim 46 but not claim 45.

the processor. Higham, col. 15, ll. 41-45. Thus, the Appellants' statement that "[t]his information is gathered for record keeping, not for authorizing usage" (App. Br. 63) is incorrect. As the system is able to determine what access may be had by any particular user, the system inherently discloses a data store having data representative of a plurality of authorized users.

Appellants also argue that Higham does not disclose that "a user is enabled to input indicia corresponding to a medical item responsive to the input of data corresponding to an authorized user in a data store, especially to unlock a door." App. Br. 64. Higham discloses that a user also enters item data representative of a medical item by pressing a button 128 associated with a receptacle 124. Higham, col. 15, ll. 26-40; *see also*, Higham, col. 13, ll. 24-26 (actuating buttons enters item identification information). If the system has determined that the particular user is entitled to access that receptacle, when the button is pressed to enter the medical item data, the door or cover 134 is unlocked. Higham, col. 15, ll. 32-34, 41-45. As such, the Appellants have not persuaded us that Higham fails to teach unlocking a lock responsive to input of medical item indicia, which inputting is enabled by the user inputting identification data corresponding to an authorized user.

We therefore find that Higham anticipates claim 48.

With respect to claim 49, the Examiner has presented a finding that Higham teaches the additional limitations set forth in this claim. Ans. 13. The Appellants have not presented any argument tending to establish that the Examiner's finding is in error, and the finding appears to be supported the Higham reference. The rejection of claim 49 is thus sustained.

With respect to claim 50, the Appellants essentially repeat the same arguments presented in countering the rejection of claim 48, namely that Higham does not disclose that the user identification input into the system is used to determine whether the user is an authorized user and a computer that unlocks a drawer responsive to receiving input from a determined authorized user that corresponds to a particular medical item. App. Br. 65. For the same reasons discussed above, we disagree. The rejection of claim 50 is sustained.

*Anticipation--Claims 45, 48, and 50—Pearson*

Because we affirm, *infra*, the rejection of these claims as being unpatentable over Blechl in view of Weinberger, and, *supra*, the rejection of claims 48 and 50 as being anticipated by Higham, we do not reach this rejection.

*Anticipation—Claim 45—Colson ‘297*

Because we affirm, *infra*, the rejection of this claim as being unpatentable over Blechl in view of Weinberger, we do not reach this rejection.

*Obviousness--Claims 2 and 26—Lavigne/Official Notice*

Nemoto (US 4,237,439, issued Dec. 2, 1980), Keskin (US 5,894,277, issued Apr. 13, 1999) and Tabata (US 4,656,850, issued Apr. 14, 1987) were cited by the Examiner in support of his taking of official notice that the use of permanent magnets in solenoids is well known. Ans. 14-15. The Examiner concludes that it would have been obvious to place the visual

indicator on the lock in Lavigne as a matter of design choice. Ans. 15. The additional references are not relied on by the Examiner to cure the deficiencies in Lavigne as discussed above with respect to independent claims 1 and 24, from which claims 2 and 26 depend. The Examiner's conclusion as to the alleged obviousness of placing the visual indicator on the lock in Lavigne also does not address the deficiencies noted. Therefore, the rejection of claims 2 and 26 is not sustained.

*Obviousness—Claim 47—Higham*

The Examiner presented findings and a conclusion to the effect that it would have been obvious for the processor of Higham to lock the door upon closure to avoid confusion with having multiple doors open. Ans. 16. The Appellants did not address the findings and conclusion, and instead argue that Higham was not shown to have rendered claim 46 (erroneously identified in the introductory sentence of the rejection) obvious. App. Br. 71. Notwithstanding the absence of any germane argument made by the Appellants, the Examiner's findings and conclusion appear to be directed to an alleged implied suggestion in Higham to "change the lock to the locked condition whenever the door is closed." Ans. 16. Claim 47, however, recites limitations that result in the computer changing the lock to the locked condition while the door is open. As such, the Examiner's position is deficient with respect to establishing the unpatentability of claim 47. The rejection of claim 47 as being unpatentable over Higham is not sustained.

*Obviousness--Claims 1, 3, 24-26, and 41—Lavigne/Aten*

Aten is not relied on by the Examiner to cure the deficiencies in Lavigne, as discussed above with respect to the anticipation rejection of independent claims 1, 24, and 27. Therefore, the rejection of claims 1, 3, 24-26, and 41 is not sustained.

*Obviousness--Claims 1, 3, 24, and 25—Colson '450/Lavigne*

Lavigne is not relied on by the Examiner to cure the deficiencies in Colson '450 as discussed above with respect to the anticipation rejection of independent claims 1 and 24. Therefore, the rejection of claims 1, 3, 24, and 25 is not sustained.

*Obviousness--Claims 45-50—Blechl/Weinberger*

The Appellants first argue, with respect to independent claims 45 and 48, that Blechl does not have a data store which includes information for a plurality of authorized users, and instead stores authorization data on individual ID cards. App. Br. 85-86. The Examiner maintains that Blechl, at column 8, lines 60-68, discloses that user authorization systems other than individual ID cards may be used. The Appellants interpret this section of Blechl as disclosing that data that is more secure than a PIN may be required to be stored on individual ID cards to provide enhanced security. App. Br. 86.

The Examiner has the better position here. Blechl states that “the control unit **300** is composed of the identification unit **247**, which uses passwords, IC cards or similar means to allow individual identification of

users . . .,” clearly implying that a password system could be used instead of individual ID cards. Blechl, col. 8, ll. 46-49. Similarly, Blechl states that “other kinds of identification methods,” i.e., methods other than “a card reader employing an IC card or magnetic card,” can also be used. Blechl, col. 8, ll. 60-68. Such other methods include the use of passwords, which, in the absence of use of ID cards would require a data store including data representative of a plurality of users.

The Appellants next argue that, unlike in claims 45 and 48, which have the user input both user identification data and item indicia “through the at least one input device,” the Blechl system has a separate user identification unit 247 and medication input unit 248. App. Br. 88. Blechl, however, indicates that both the user identification unit and the medication input unit are part of a single control unit 300. Blechl, col. 8, ll. 45-51; Fig. 19. The Appellants have not established how the claimed “at least one input device” structurally distinguishes claims 45 and 48 over the “single control unit” of Blechl.

The Appellants next argue that the section of Blechl relied upon relates to opening a drawer, not a door. App. Br. 88. The Appellants fail to note that this section of Blechl discloses unlocking the latch mechanism to allow access to the “universal compartment”, which is closed off by “second auxiliary door 44.” Blechl, col. 9, ll. 47-49; col. 5, ll. 17-22. The Appellants’ argument is thus not persuasive.

Appellants argue that the passage at column 4, lines 39-50 of Blechl does not disclose a computer enabling a user to input medical item indicia in response to an input of data corresponding to one of the plurality of authorized users. To the extent that that passage is lacking such disclosure,



the disclosure at column 9, lines 36-49, in concert with the disclosure at column 8, lines 45-68, provide disclosure of this claimed feature.

None of the Appellants' arguments apprise us of any error in the Examiner's determination that the subject matter of claims 45 and 48 would have been obvious over Blechl in view of Weinberger. The rejection of claims 45 and 48 is thus sustained.

With respect to claim 46, the Examiner has not adequately explained how the section in Weinberger relied on (column 7, lines 13-34) can be interpreted as disclosing a lock that comprises a visual indicator, as claimed. That section discloses indicating lights 33 on the compartments 32, and a screen 29 displaying certain information. Neither appears to be components of a lock. The rejection of claim 46 is not sustained.

Similarly, with respect to claim 47, the Examiner has not adequately explained how the section in Weinberger relied on (column 7, lines 20-30) can be interpreted as disclosing the limitations set forth in that claim. In particular, we do not see a clear disclosure of a system in which a computer responds to a door sensor "open" signal to change the lock for that door to the locked condition. The rejection of claim 47 is not sustained.

The Appellants arguments directed to claims 49 and 50 essentially mimic some of the arguments made with respect to claims 45 and 48. App. Br. 94. For the reasons provided above, the rejection of claims 49 and 50 is sustained.

*Obviousness--Claims 16-20, 34, and 35—Lavigne/Engleson*

Engleson is not relied on by the Examiner to cure the deficiencies in Lavigne as discussed above with respect to the anticipation rejection of

independent claims 1 and 27. Therefore, the rejection of claims 16-20, 34, and 35 is not sustained.

*Obviousness--Claims 4-8 and 40—Colson ‘450/Iwamoto*

Iwamoto is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claims 1 and 27. Therefore, the rejection of claims 4-8 and 40 is not sustained.

*Obviousness—Claim 23—Colson ‘450/Warren*

Warren is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claim 1. Therefore, the rejection of claim 23 is not sustained.

*Obviousness--Claims 9, 16, 17, 20, 22, 34, and 35—Colson ‘450/Holmes*

Holmes is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claims 1 and 24. Therefore, the rejection of claims 9, 16, 17, 20, 22, 34, and 35 is not sustained.

*Obviousness--Claims 9, 16, 17, 20, 22, 34, 35, and 42—Lavigne/Holmes*

Holmes is not relied on by the Examiner to cure the deficiencies in Lavigne as discussed above with respect to the anticipation rejection of independent claims 1, 24, and 27. Therefore, the rejection of claims 9, 16, 17, 20, 22, 34, 35, and 42 is not sustained.

*Obviousness--Claims 45 and 49—Halvorson/McDonald*

Because we affirm, *supra*, the rejection of claim 45 as being unpatentable over Blechl in view of Weinberger, we do not reach this rejection as to claim 45.

The rejection of claim 49 is not sustained, in that the Examiner did not reject base independent claim 48 on this same ground, specifically noting, in an Office communication dated November 14, 2008, that the rejection had been withdrawn as to claim 48.

*Obviousness--Claims 46, 47 and 49—Halvorson/Weinberger*

The rejection of claims 46, 47 and 49 is not sustained, in that the Examiner did not reject base independent claims 45 and 48 on this same ground, specifically noting, in an Office communication dated November 14, 2008, that the rejection had been withdrawn as to claims 45 and 48.

*Obviousness--Claims 16-20, 34, and 35—Colson '450/Gombrich*

Gombrich is not relied on by the Examiner to cure the deficiencies in Colson '450 as discussed above with respect to the anticipation rejection of independent claims 1 and 27. Therefore, the rejection of claims 16-20, 34, and 35 is not sustained.

*Obviousness--Claims 4-11 and 21—Lavigne/Iwamoto*

Iwamoto is not relied on by the Examiner to cure the deficiencies in Lavigne as discussed above with respect to the anticipation rejection of

independent claim 1. Therefore, the rejection of claims 4-11 and 21 is not sustained.

*Obviousness--Claims 11-15 and 23—Lavigne/Genest*

Genest is not relied on by the Examiner to cure the deficiencies in Lavigne as discussed above with respect to the anticipation rejection of independent claim 1. Therefore, the rejection of claims 11-15 and 23 is not sustained.

*Obviousness—Claim 41—Colson ‘450/McDonald*

McDonald is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claim 27. Therefore, the rejection of claim 41 is not sustained.

*Obviousness—Claim 41—Colson ‘450/Weinberger*

Weinberger is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claim 27. Therefore, the rejection of claim 41 is not sustained.

*Obviousness--Claims 30 and 41—Colson ‘450/Higham*

Higham is not relied on by the Examiner to cure the deficiencies in Colson ‘450 as discussed above with respect to the anticipation rejection of independent claim 27. Therefore, the rejection of claims 30 and 41 is not sustained.

## CONCLUSIONS

The Examiner erred in rejecting claims 27-43 as being indefinite.

The Examiner erred in finding that the subject matter of claims 1, 3, 9, 24, 25, 27, 31-33, 36-38, 42-44, 49, and 50 is anticipated by Lavigne.

The Examiner erred in finding that the subject matter of claims 1, 4, 12-15, 21, 24, 27-29, 31-33, 39, 41, 44, 48, and 50 is anticipated by Colson '450.

The Examiner did not err in finding that the subject matter of claims 48-50 is anticipated by Higham. However, the Examiner erred in finding that the subject matter of claim 46 is anticipated by Higham.

The Examiner erred in concluding that the subject matter of claims 2 and 26 would have been obvious over Lavigne and the taking of official notice.

The Examiner erred in concluding that the subject matter of claim 47 would have been obvious over Higham.

The Examiner erred in concluding that the subject matter of claims 1, 3, 24-26, and 41 would have been obvious over Lavigne and Aten.

The Examiner erred in concluding that the subject matter of claims 1-3, 24, and 25 would have been obvious over Colson '450 and Lavigne.

The Examiner did not err in concluding that the subject matter of claims 45 and 48-50 would have been obvious over Blechl and Weinberger. However, the Examiner erred in concluding that the subject matter of claims 46 and 47 would have been obvious over Blechl and Weinberger.

The Examiner erred in concluding that the subject matter of claims 16-20, 34, and 35 would have been obvious over Lavigne and Engleson.

The Examiner erred in concluding that the subject matter of claims 4-8 and 40 would have been obvious over Colson '450 and Iwamoto.

The Examiner erred in concluding that the subject matter of claim 23 would have been obvious over Colson '450 and Warren.

The Examiner erred in concluding that the subject matter of claims 9, 16, 17, 20, 22, 34, and 35 would have been obvious over Colson '450 and Holmes.

The Examiner erred in concluding that the subject matter of claims 9, 16, 17, 20, 22, 34, 35 and 42 would have been obvious over Lavigne and Holmes.

The Examiner did not establish that the subject matter of claim 49 would have been obvious over Halvorson and McDonald.

The Examiner did not establish that the subject matter of claims 46, 47 and 49 would have been obvious over Halvorson and Weinberger.

The Examiner erred in concluding that the subject matter of claims 16-20, 34, and 35 would have been obvious over Colson '450 and Gombrich.

The Examiner erred in concluding that the subject matter of claims 4-11 and 21 would have been obvious over Lavigne and Iwamoto.

The Examiner erred in concluding that the subject matter of claims 11-15 and 23 would have been obvious over Lavigne and Genest.

The Examiner erred in concluding that the subject matter of claim 41 would have been obvious over Colson '450 and McDonald.

The Examiner erred in concluding that the subject matter of claim 41 would have been obvious over Colson '450 and Weinberger.

The Examiner erred in concluding that the subject matter of claims 30 and 41 would have been obvious over Colson '450 and Higham.

#### DECISION

The rejection of claims 48-50 as being anticipated by Higham is affirmed. The rejection of claims 45 and 48-50 as being unpatentable over Blechl in view of Weinberger is affirmed. All rejections of claims 1-44, 46 and 47 are reversed. We do not reach the rejection of claims 45, 48, and 50 as being anticipated by Pearson and the rejection of claim 45 as being anticipated by Colson '297.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED-IN-PART

Klh